IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
COMPANY PETITION NO.473 OF 2005

Dr. Dani Makhija & Anr. ...Petitioners.
V/s.
Cox & Kings (I) Pvt. Ltd. ...Respondent.

Mr.Sharan Jagtiani with Ms.Shweta Patrawala i/b Divya Shah Associates for the Petitioner.
Mr.Snehal Shah i/b Dhru & Co. for the Respondent.

CORAM : S.J.VAZIFDAR, J.
DATED : 10th February, 2006.

P.C.:

1. According to the Petitioners, the Company is liable to pay them a sum of Rs.73,155/-.

2. The Petitioners had booked a travel package with the Respondents. The Petitioners executed a Booking Form at the foot whereof was the following endorsement: "Client’s attention is drawn to the Booking Conditions and Terms and Conditions. The said Booking Conditions incorporate the Contract entered into by the Company with the Clients."

3. The travel was to commence on 3rd January, 2005 for 10 days.

4. According to the Petitioners, they telephonically

informed the Company that they intended to cancel the tour on 27th December, 2004. The Petitioners contend that by a letter dated 30th December, 2004, they cancelled the tour.

5. The question that falls for consideration is whether the Petitioners are entitled to a refund of the amount paid by them for the said tour.

6. The Clause pertaining to the forfeiture of the deposit relied upon by Mr.Jagtiani reads as under:

> **FORFEITURE OF DEPOSITS:** The Company shall be within its rights to forfeit the non-refundable interest free deposit paid by the client to the company alongwith the prescribed booking form duly completed for the tour booked by the client. In the event the client cancels the booking or on failure on the part of the client to adhere to the tour payment schedule as informed in the documentation Check List or in the event the visa of any country is not granted or is unable to travel on the tour booked by the client due to any reason whatsoever, including medical ground or sickness, the non refundable interest free deposits shall stand forfeited and the scale of cancellation set out in the "How To Book" section

of the brochure shall be applicable and binding.

(*emphasis supplied)*

7. The "How To Book" brochure contains terms under the caption "CANCELLATION." The same contains a table indicating graded cancellation charges. Cancellation charges vary depending upon the number of days prior to the scheduled date of the tour by which intimation of cancellation is given by the client. If this schedule applies, the Petitioners are not entitled to any refund as the clause provides that if the notice of cancellation is less than two clear days prior to the departure of the tour, 100% of the tour cost would be levied as cancellation charges.

8. Mr.Jagtiani submitted that the above clause regarding forfeiture of deposits only applies to the non-refundable interest free deposit portion and not to the entire charges. There is, however, some doubt as to whether the submission is well founded in view of the words emphasised by me in the forfeiture clause: **"and the scale of cancellation set out in the "How To Book" section of the brochure shall be applicable and binding".**

9. Mr.Jagtiani’s submission would be well founded if

these words were not present. It is pertinent to note however that there is no scale of cancellation in the "How To Book" section regarding non-refundable interest free deposit. It is therefore, possible to construe the words emphasised as being disjuncted from the rest of the clause for the simple reason that there is only one scale of cancellation in the to "How To Book" portion of the brochure. If separate scales were provided for the deposit, given, the Petitioners' case would certainly have been well founded.

10. In the circumstances, I am unable to say that there is no bonafide dispute raised by the Company. In this view of the matter, it is not necessary for me to consider the other contentions raised by Mr.Shah including that the cancellation letter was not signed by the Petitioners, i.e., the persons who had entered into the contract.

11. The Petition is therefore dismissed but with no order as to costs.